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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,311	09/23/2003	Wayne J. Allen	42P16359	4675

8791 7590 09/29/2006

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EXAMINER

LE, MIRANDA

ART UNIT	PAPER NUMBER
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2167

DATE MAILED: 09/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/669,311

Applicant(s)

ALLEN, WAYNE J.

Examiner

Miranda Le

Art Unit

2167

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 18 September 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: None.  
Claim(s) objected to: None.  
Claim(s) rejected: 1-23.  
Claim(s) withdrawn from consideration: None.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
JOHN COTTINGHAM  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100

  
Miranda Le  
September 26, 2006

Continuation of 11. does NOT place the application in condition for allowance because: Applicants' arguments do not overcome the final rejection.

First, examiner thanks the applicant for noticing claims 22-23, it was an oversight on the examiner's part that these claims should have been finally rejected for the same reasons that were given for dependent claims 2, 3; due to a typographical error.

Second, Applicant's arguments have been fully considered but they are not persuasive. The Examiner has thoroughly reviewed Applicants' arguments but firmly believes that the cited reference reasonably and properly meet the claimed limitation. Applicants are reminded that the Examiner is entitled to give the broadest reasonable interpretation to the language of the claimed as explained below:

Applicant argues that:

(1) Carney's reference does not teach/suggest "determining from the queried file how packets for the protocols are constructed".

(2) Carney's reference does not teach/suggest "building a protocol runtime specification based on how packets for the protocol are constructed".

(3) No reasons to combine Carney and Venigalla.

The Examiner respectfully disagrees for the following reasons:

Per (1), Carney teaches determining from the queried file how packets for the protocols are constructed as:

a. The request for building a GetNext protocol (i.e. protocols are constructed) is taught by Carney at col. 6, lines 24-33 (a GetNext Request is received 302. A determination is made as to whether a cached GetNext list is available 304. If not 306, a GetNext list is built 308).

b. The queries file = objects. It should be noted that the step of building a GetNext Protocol based on the objects (i.e. the queries file) is taught by Carney at col. 4, lines 46-60 (i.e. The network system includes a plurality of network nodes and a network device, wherein the network device includes a system controller for managing a device, the system controller further includes a dynamic management information base defining objects associated with the device for managing the device, a management agent and device controller for managing operation of the device as defined by the objects with the management information base and a management information base manager, interfacing with the dynamic management information base and the management agent and device controller, for building a GetNext list, storing the GetNext list, maintaining the stored GetNext list for a predetermined amount of time and using the stored GetNext list to determine the next row for a subsequent GetNext request from a first client when the time has not expired (col. 4, lines 46-60).;

c. The objects of Carney disclose information in the objects for building a protocol are taught in col. 3, lines 26-31 as "MIBs are often divided into groups of related objects. MIB-2 has 10 groups, including "system," "interfaces," "IP," "TCP," "UDP," and "SNMP". The RMON MIB for Ethernet segments has nine groups, including "statistics," "history," "alarm," "event," and "capture" (col. 3, lines 26-31).

Per (2), Carney teaches building a protocol runtime specification based on how packets for the protocol are constructed as "dynamic information may be supported by building the "GetNext" list once, then caching that list for a given amount of time" (col. 6, lines 14-24).

Therefore, it is evident that the claim language as presented is still read on by the Carney reference at the cited paragraph in the claim rejections.

Per (3), applicant seems to be questioning whether the Carney and Venigalla references are combinable to reasonably establish the prima facie case of obviousness under 35 USC 103.

In response to the preceding arguments, the examiner submits that in order for references to be combinable to reasonably establish the prima facie case of obviousness under 35 USC 103, they must be analogous and within the same field of endeavor.

In this case, the instant application is directed to method and system to add protocol support for network traffic tools (Specification [0001]).

Carney is directed to a method and apparatus for improving dynamic simple network management protocol GetNext processing (Abstract).

Venigalla is directed to a method and apparatus for the automated exchange of information, and more particularly the use of a hierarchical protocol based upon an extensible markup language (XML) in order to enable machine-to-machine communication of data (Abstract).

Carney and Venigalla are clearly directed to the same field as systems and methods for computer to computer protocol implementing. These references are analogous and within the same aspects of endeavor, and thus, they are combinable.

More specifically, Carney teaches the step of building a protocol based on information stored in an object as mentioned above, in other words, an object of Carney is a protocol structure description.

Venigalla teaches the communication protocol using XML (col. 9, lines 11-32), the XML includes a protocol structure (See Abstract) or protocol structure description.

Since both Carney and Vinigalla direct to a protocol structure description, although Carney does not use XML to store the information of protocol, Vinigalla uses the XML for storing the information of protocol.

Carney does not explicitly teach the file (i.e. the object) is written in an Extensible Markup Language (XML). Venigalla teaches the protocol structure is written in an Extensible Markup Language (XML) (i.e. structured content protocol using XML (Abstract).

It would have been obvious to one of ordinary skill of the art having the teaching of Carney and Venigalla at the time the invention was made to modify the object including protocol information structure of Carney by using an Extensible Markup Language for writing the protocol information structure as taught by Venigalla.

One of ordinary skill in the art would be motivated to make this combination in order to use an extensible markup language as a structural component for machine-to-machine communication in view of Venigalla, as doing so would give the added benefit of eliminating or reducing the need for manual preparation of predefined hierarchies of data as taught by Venigalla (col. 2, line 62 to col. 3, line 8).

For the reasons set forth above, the 103 rejection is proper.